

Supreme Court, U.S.
FILED

APR 25 1988

JOSEPH F. SPANIOLO, JR.
CLERK

No. 87-1535

In The
Supreme Court of the United States
October Term, 1987

—0—
JOHN HANCOCK VARIABLE LIFE
INSURANCE COMPANY,

Petitioner,
v.

LOIS ANNÉTE PIERCE,

Respondent.

—0—
**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

—0—
WILLIAM H. HARDIE, JR.
ALAN C. CHRISTIAN
Attorneys for Petitioner,
John Hancock Variable
Life Insurance Company
P. O. Box 1988
Mobile, Alabama 36633
(205) 432-7682

Of COUNSEL:

JOHNSTONE, ADAMS, BAILEY, GORDON & HARRIS



TABLE OF CONTENTS

	Page
Table of Authorities	ii
Reply to Respondent's Statement of the Case	1
Reply to Respondent's Argument	2
Subsequent Actions of Alabama Supreme Court	5
Conclusion	6
Appendix	1a

TABLE OF AUTHORITIES

Page

CASES:

- Banker's Life & Casualty Company v. Crenshaw*,
Supreme Court of the United States, No. 85-1765 3, 4

MISCELLANEOUS:

- Tort Reform Act, June 11, 1987, 1987 Ala. Acts 185 4

No. 87-1535

In The
Supreme Court of the United States
October Term, 1987

JOHN HANCOCK VARIABLE LIFE
INSURANCE COMPANY,

Petitioner,
v.

LOIS ANNETTE PIERCE,

Respondent.

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

**REPLY TO RESPONDENT'S
STATEMENT OF THE CASE**

Respondent's statement of the case asserts as uncontested facts that which at trial was contested by the parties, with minor exceptions. However, as this Petition for Writ of Certiorari is addressed only to legal issues concerning the award of punitive damages in Ala-

bama as violative of the Constitution of the United States, no further comment will be made as to Respondent's erroneous statement of the case.

—0—

REPLY TO RESPONDENT'S ARGUMENT

Respondent asserts four grounds for denying the Petition for Writ of Certiorari to the Alabama Supreme Court, and each will be discussed *seriatim*.

1. Respondent asserts that the question of the constitutionality of an award of punitive damages under Alabama law being violative of the Constitution of the United States "*was not presented to or considered by the Court below at any stage . . .*". That statement is pure misrepresentation by Respondent.

John Hancock Variable Life Insurance Company (hereinafter "John Hancock") asserted that an award of punitive damages against it would be a violation of the Constitution of the United States in its Amended Answer. (Clerk's Record [hereinafter "CR"], p. 41). John Hancock moved for a directed verdict for dismissal as to the claim of punitive damages on the fraud claim at the close of all the evidence on the ground that the claim for punitive damages was barred by the Constitution of the United States, (Reporter's Transcript [hereinafter "RT"], p. 320), which motion was denied. John Hancock then timely objected to the instructions given by the trial court as to the award of punitive damages based on a civil standard of proof to the "*reasonable satisfaction*" of the jury. (RT, pp. 329, 339).

After the jury returned a verdict against John Hancock on the fraud claim in the amount of \$350,000, John Hancock timely filed a motion for judgment notwithstanding the verdict reasserting that the award of punitive damages was in violation of the Constitution of the United States. (CR, p. 110).

The Alabama Supreme Court itself noted that John Hancock raised the issue that the award of punitive damages in civil proceedings in Alabama violates the Constitution of the United States in both its original opinion, (Petition, App.A, p.3a), as well as in its opinion on John Hancock's application for rehearing. (Petition, App.B, p.13a). Clearly, the Alabama Supreme Court did not address these issues, though they were, in fact, raised by John Hancock.

Accordingly, this ground for denying the Petition for Writ of Certiorari is meritless.

2. Respondent asserts that the opinion below of the Alabama Supreme Court is not in conflict with any other state or federal decision. John Hancock has not asserted that such is the case except to advise that the issue has been raised before this Court in the pending case of *Banker's Life & Casualty Company v. Crenshaw, Supreme Court of the United States, No. 85-1765*. John Hancock is not relying on these considerations contained in Rule 17(b) of the Supreme Court Rules in support of its Petition for Writ of Certiorari, such that Respondent's arguments on this point are irrelevant.

3. Respondent argues that the opinion below of the Alabama Supreme Court is not inconsistent with prior

decisions of this Court. John Hancock has not alleged that such is the case, only advising that this issue is currently before the Court in *Banker's Life*. John Hancock is not otherwise relying on Rule 17(e), second clause, of the Supreme Court Rules as a basis for the Petition for Writ of Certiorari, such that Respondent's arguments are simply irrelevant.

4. Finally, Respondent argues that it "*is not essential that the Court resolve these constitutional questions now . . .*" because the Legislature of Alabama passed the Tort Reform Act on June 11, 1987, published at 1987 Ala. Acts 185. This argument is absurd.

The Act itself does not apply to claims which have accrued prior to its adoption, including the claim herein, and Respondent readily admits same. (Objection, p. 5). This argument is not only meritless, but irrelevant.

Respondent concludes her argument by stating that this Petition for Writ of Certiorari is "*simply a last ditch attempt by John Hancock to delay the payment of life insurance benefits which were due . . .*" and that "*John Hancock has retained and invested the sum of \$200,000 for this period of time . . .*". These statements are a complete misrepresentation of the facts and the issues raised in the Petition for Writ of Certiorari.

By returning its verdict against John Hancock, the jury, by implication, found that the policy was not validly issued and no money was due under the policy. Damages in excess of the policy amount can only be punitive.

John Hancock has not sought a review of the judgment against it as to the compensatory damages awarded

by the jury, in the amount of \$200,000. Moreover, John Hancock has never retained nor invested any sum of \$200,000 for any period of time, having only received the life insurance premiums collected by its soliciting agent and forwarded to John Hancock. These misrepresentations by Respondent are clearly inappropriate in this forum.

—————o—————

SUBSEQUENT ACTIONS OF ALABAMA SUPREME COURT

John Hancock has, of necessity and pursuant to its terms, interpreted the opinion of the Alabama Supreme Court on application for rehearing (Petition, App.B, p.13a-15a) as a final order for purposes of petitioning this Court for a Writ of Certiorari. However, recent actions by the Alabama Supreme Court suggest that the opinion on application for rehearing dated December 11, 1987 is not interpreted as a final order by the Alabama Supreme Court.

Soon after John Hancock filed its Petition for Writ of Certiorari herein, it also filed a motion for stay of execution with the Alabama Supreme Court. By order dated April 18, 1988, the Alabama Supreme Court denied John Hancock's motion for stay of execution "*as being moot.*" (App., p1a). It would appear that the only grounds upon which said motion for stay of execution would be moot is if the Alabama Supreme Court considered its opinion on the application for rehearing dated December 11, 1988 a non-final order such that the proceedings therein were still under submission to that court.

John Hancock is unable to determine from the Alabama Supreme Court opinion on application for rehearing and its subsequent order of April 18, 1988 whether this case is still under submission to the Alabama Supreme Court. However, if such is the case, then John Hancock's Petition for Writ of Certiorari herein would be premature.

CONCLUSION

For the foregoing reasons, as well as those reasons set forth in John Hancock's Petition for Writ of Certiorari, we respectfully urge the Court to grant the Petition for Writ of Certiorari to the Alabama Supreme Court.

Respectfully submitted,

WILLIAM H. HARDIE, JR.

/s/ ALAN C. CHRISTIAN
Attorneys for Petitioner,
*John Hancock Variable
Life Insurance Company*
P. O. Box 1988
Mobile, Alabama 36633
(205) 432-7682

OF COUNSEL:

JOHNSTONE, ADAMS, BAILEY, GORDON & HARRIS

APPENDIX

**THE STATE OF ALABAMA
JUDICIAL DEPARTMENT**

IN THE SUPREME COURT OF ALABAMA

April 18, 1988

85-722)
John Hancock Variable Life) Mobile Circuit
) Court
v.)
) CV-83-002898
Lois Annette Pierce)

ORDER

The appellant having filed a motion for stay of execution, and the same having been submitted and duly considered by the Court,

IT IS ORDERED that the motion to stay of execution is denied as being moot.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 19th day of April, 1988.

/s/ Robert G. Esdale
Clerk,
Supreme Court of Alabama